HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE MS JUSTICE G.ROHINI

WRIT APPEAL No.877 OF 2007

Between:

Mamidi Appalanarasayya

. . .Appellant

AND

The District Collector,
Visakhapatnam and others

. . .Respondents

:: JUDGMENT ::

Counsel for the appellant : Shri P.Sri Raghu Ram

Counsel for respondent Nos.1 & 2: Government Pleader for Revenue

Counsel for respondent No.3 : Smt. V.Preeti Reddy

23rd October, 2007

-

PER G.S.SINGHVI, CJ

This is an appeal for setting aside order dated 17.07.2007 passed by the learned Single Judge in Writ Petition No.10197 of 2007, whereby he declined to entertain the appellant's prayer for quashing communication dated 02.05.2007 issued by Tahsildar, Bheemunipatnam Mandal refusing to issue pattedar pass book on the premise that the D-form patta issued to him has already been cancelled due to violation of the conditions of assignment.

A perusal of the record shows that the appellant was assigned land measuring Ac.3.69 in Survey No.94/1 to 4 and 6 to 8 situated at Kapuluppada Village, Bheemunipatnam Mandal, Visakhapatnam District and D-form patta was issued in his favour on 30.07.1971. He took possession of the assigned land and raised mango grove over it. On 09.04.2007, the appellant filed an application before Tahsildar, Bheemunipatnam Mandal, Visakhapatnam District (respondent No.2 herein) for issue of pattedar passbook / title deed. At that stage, the officer concerned informed the appellant that D-form patta granted to him has been cancelled and possession of the land has been handed over to Visakhapatnam Urban Development Authority.

The appellant challenged the rejection of his request for issue of pattedar passbook on several grounds set out in his affidavit dated 06.05.2007. One of the grounds taken by him was that the land assigned to him was still in his possession and no order has been passed by the competent authority for cancellation of assignment after

holding an enquiry and giving him opportunity of hearing.

While issuing notice before admission on 09.05.2007, the learned Single Judge directed the parties to maintain the status quo as it was obtaining on that day. On 26.06.2007, 02.07.2007 and 10.07.2007, the case was adjourned at the request of the learned Assistant Government Pleader for Revenue (General-A) for the purpose of filing counter-affidavit. However, no counter was filed on behalf of either of the respondents. On 17.07.2007, the learned Single Judge, after taking cognizance of order dated 20.01.2006, which is said to have been passed by Mandal Revenue Officer, Bheemunipatnam for cancellation of the assignment of land of 31 persons including the appellant, dismissed the writ petition.

We have heard Shri P.Sri Raghu Ram, learned counsel for the appellant and the learned Government Pleader for Revenue and perused the record.

After carefully reading order dated 20.01.2006, a xerox copy of which is available in the record of the main writ petition, we enquired from the learned Government Pleader for Revenue about the date on which notice dated 05.01.2006 to which reference has been made in order dated 20.01.2006 was served on the appellant, the date on which order for cancellation of the assignment of 31 persons was actually passed and the date on which the order was communicated to the appellant and other similarly situated persons, but he could not give any answer. It is, therefore, reasonable to presume that order for cancellation of the assignment was passed by the then Mandal Revenue Officer without complying with the basics of natural justice. Unfortunately, this serious lacuna in the order of cancellation has been overlooked by the learned Single Judge, who, as mentioned above, dismissed the writ petition only on the ground that the D-form patta

issued in favour of the writ petitioner (the appellant herein) has already been cancelled.

At this stage, the learned Government Pleader for Revenue came out with a fair suggestion that the action taken by the then Mandal Revenue Officer, Bheemunipatnam for cancellation of the assignment made in favour of the appellant shall not be acted upon and fresh proceedings will be drawn by the competent authority after giving action oriented notice and opportunity of hearing to the appellant. We appreciate the fair stand taken by the learned Government Pleader before the Division Bench and dispose of the appeal in the following terms:

1) Order passed by the learned Single Judge in Writ Petition No.10197 of 2007 as also order dated 20.01.2006 passed by the then Mandal Revenue Officer, Bheemunipatnam shall be treated as ineffective and inoperative.

2) The competent authority shall be free to pass appropriate order in the matter of cancellation of assignment made in favour of the appellant after giving him action oriented notice and reasonable opportunity to show cause against the proposed action.

3) If the competent authority, after complying with the rules of natural justice passes fresh order for cancellation of assignment, then the appellant shall be free to avail appropriate legal remedy including the one by filing appeal.

4) Till the passing of fresh order, the possession of the appellant over the subject land shall not be disturbed.

As a sequel to disposal of the main appeal, WAMP No.1758 of 2007 filed by the appellant for interim relief is disposed of as infructuous.

G.S.SINGHVI, CJ

23rd October, 2007

G.ROHINI, J

kvni